

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20798
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (Petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated July 25, 2007, asserting additional Idaho income tax and interest for 2005 in the total amount of \$1,511.

The only issue in this docket is whether the gain [Redacted] qualifies for the Idaho capital gains deduction. The auditor determined that the income should be classified as ordinary income as recapture of depreciation pursuant to Internal Revenue Code § 1245. The Petitioner contends that the gain should be considered capital gain from the involuntary conversion (pursuant to Internal Revenue Code § 1233) [Redacted]. The Petitioner cited no further authority for his position.

Idaho Code § 63-3022H sets out the authority for the Idaho capital gains deduction. It stated, in pertinent part:

Deduction of capital gains. -- (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) As used in this section "qualified property" means the following property having an Idaho situs at the time of sale:

* * *

(c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho; (Underlining added.)

Internal Revenue Code § 1245 stated, in pertinent part:

General rule.

(1) Ordinary income.

Except as otherwise provided in this section, if section 1245 property is disposed of the amount by which the lower of—

(A) the recomputed basis of the property, or

(B) (i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property, exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle. (Underlining added.)

The gain (\$47,174) [Redacted] was less than the depreciation allowed or allowable (\$58,800) [Redacted] here in question. Therefore, all of the gain is considered to be ordinary income pursuant to Internal Revenue Code § 1245. We notice further from the language of IRC § 1245 that this would be true even if the gain were from an involuntary conversion as the Petitioner contends. Therefore, the Commission finds that the auditor's position must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated July 25, 2007, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following tax, penalty, and interest (computed to May 15, 2008):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$1,381	\$191	\$1,572

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.